

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re* Petition of

East Asian Consortium B.V.

For an Order to Take Discovery from Bank of America, N.A.; Bank of New York Mellon; BNP Paribas USA; China Construction Bank; Citibank N.A.; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; MashreqBank PSC; Standard Chartered Bank; Wells Fargo Bank, N.A.

Pursuant to 28 U.S.C. § 1782 in Aid of a Foreign Proceeding

Civil Action No. \_\_\_\_\_

*Ex Parte* Petition for Assistance in Aid of a Foreign Proceeding Pursuant to 28 U.S.C. § 1782

Pursuant to 28 U.S.C. § 1782, Petitioner East Asian Consortium B.V. (“**EAC**”), by its undersigned counsel, respectfully submits this Petition to take discovery from the New York branches of Bank of America, N.A.; Bank of New York Mellon; BNP Paribas USA; China Construction Bank; Citibank N.A.; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; MashreqBank PSC; Standard Chartered Bank; and Wells Fargo Bank, N.A. (together, the “**New York Banks**”).

Petitioner seeks an order authorizing the issuance of subpoenas *duces tecum* (together, the “**Subpoenas**”) to the New York Banks. This discovery is sought in aid of proceedings pending before the High Court, Gauteng Local Division, Johannesburg, South Africa (the “**South African Proceedings**”) against MTN Group Ltd., MTN International (Mauritius) Ltd., Mobile Telephone Networks Holding (Pty) Limited, MTN International (Pty) Ltd., Phutuma Freedom Nhleko, and Irene Charnley (together, the “**Defendants**”). The New York Banks are not participants in the South African Proceedings and are not alleged to have engaged in any wrongdoing in connection with the matter. However, documents and information generated from the instant Petition will

support the allegations of bribery and corruption levelled against the Defendants in the South African Proceedings. Specifically, Petitioner believes that the New York Banks are likely to have evidence of improper payments paid by the Defendants, which will support their allegations of bribery and corruption in the South African Proceedings.

As is discussed in greater detail in Petitioner's accompanying memorandum of law, this Petition: (1) meets the three statutory requirements set forth in 28 U.S.C. § 1782 for granting a § 1782 application; and (2) satisfies the four discretionary factors annunciated by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004) for granting a § 1782 application. Further, as Petitioners' accompanying memorandum of law further describes, Section 1782 applications are routinely granted *ex parte*. *Gushlak v. Gushlak*, 486 F. App'x 215, 217 (2d Cir. 2012) ("[I]t is neither uncommon nor improper for district courts to grant applications made pursuant to § 1782 *ex parte*. [A] respondent's due process rights are not violated because he can later challenge any discovery request by moving to quash pursuant to Federal Rule of Civil Procedure 45(c)(3).")

**WHEREFORE**, Petitioner respectfully requests that the Court grant the Petition and authorize Petitioner to issue Subpoenas to the New York Banks in the form attached hereto as **Exhibit A**, and for the Court to retain jurisdiction over this matter for purposes of enforcing any subpoenas issued herein; and for such other and further relief as the Court deems just and proper.

Dated: New York, New York  
February 2, 2021

Respectfully submitted,

/s/ James E. Berger  
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